

Introduced by Senator Blakeslee

February 18, 2011

An act to amend Section 3041 of the Penal Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as introduced, Blakeslee. Inmates; parole.

Existing law provides that, one year prior to the minimum eligible parole release date of an inmate serving an indeterminate sentence, a panel of 2 or more commissioners or deputy commissioners of the Board of Parole Hearings shall meet with the inmate and set a parole release date, as specified. Existing law provides that in the event of a tie vote, the matter shall be referred to the board for an en banc review limited to the record, as specified, that was before the panel that rendered the tie vote. Existing law requires the board to vote, upon the en banc review of the record, to either grant or deny parole and render a statement of decision. Existing law requires the board to separately state reasons for its decision to grant or deny parole and requires that the commissioners involved in the tie vote be recused from consideration of the matter in the en banc review.

This bill would make nonsubstantive changes to a provision on the subject of parole.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3041 of the Penal Code is amended to
2 read:

1 3041. (a) In the case of ~~any~~ *an* inmate sentenced pursuant to
2 any provision of law, other than Chapter 4.5 (commencing with
3 Section 1170) of Title 7 of Part 2, the Board of Parole Hearings
4 shall meet with each inmate during the third year of incarceration
5 for the purposes of reviewing the inmate's file, making
6 recommendations, and documenting activities and conduct
7 pertinent to granting or withholding postconviction credit. One
8 year prior to the inmate's minimum eligible parole release date, a
9 panel of two or more commissioners or deputy commissioners
10 shall again meet with the inmate and shall normally set a parole
11 release date as provided in Section 3041.5. No more than one
12 member of the panel shall be a deputy commissioner. In the event
13 of a tie vote, the matter shall be referred for an en banc review of
14 the record that was before the panel that rendered the tie vote.
15 Upon en banc review, the board shall vote to either grant or deny
16 parole and render a statement of decision. The en banc review shall
17 be conducted pursuant to subdivision (e). The release date shall
18 be set in a manner that will provide uniform terms for offenses of
19 similar gravity and magnitude with respect to their threat to the
20 public, and that will comply with the sentencing rules that the
21 Judicial Council may issue and any sentencing information relevant
22 to the setting of parole release dates. The board shall establish
23 criteria for the setting of parole release dates and in doing so shall
24 consider the number of victims of the crime for which the inmate
25 was sentenced and other factors in mitigation or aggravation of
26 the crime. At least one commissioner of the panel shall have been
27 present at the last preceding meeting, unless it is not feasible to
28 do so or where the last preceding meeting was the initial meeting.
29 Any person on the hearing panel may request review of any
30 decision regarding parole for an en banc hearing by the board. In
31 case of a review, a majority vote in favor of parole by the board
32 members participating in an en banc review is required to grant
33 parole to any inmate.

34 (b) The panel or the board, sitting en banc, shall set a release
35 date unless it determines that the gravity of the current convicted
36 offense or offenses, or the timing and gravity of current or past
37 convicted offense or offenses, is such that consideration of the
38 public safety requires a more lengthy period of incarceration for
39 this individual, and that a parole date, therefore, cannot be fixed
40 at this meeting. After the effective date of this subdivision, any

1 decision of the parole panel finding an inmate suitable for parole
2 shall become final within 120 days of the date of the hearing.
3 During that period, the board may review the panel's decision.
4 The panel's decision shall become final pursuant to this subdivision
5 unless the board finds that the panel made an error of law, or that
6 the panel's decision was based on an error of fact, or that new
7 information should be presented to the board, any of which when
8 corrected or considered by the board has a substantial likelihood
9 of resulting in a substantially different decision upon a rehearing.
10 In making this determination, the board shall consult with the
11 commissioners who conducted the parole consideration hearing.
12 No decision of the parole panel shall be disapproved and referred
13 for rehearing except by a majority vote of the board, sitting en
14 banc, following a public meeting.

15 (c) For the purpose of reviewing the suitability for parole of
16 those inmates eligible for parole under prior law at a date earlier
17 than that calculated under Section 1170.2, the board shall appoint
18 panels of at least two persons to meet annually with each inmate
19 until the time the person is released pursuant to proceedings or
20 reaches the expiration of his or her term as calculated under Section
21 1170.2.

22 (d) It is the intent of the Legislature that, during times when
23 there is no backlog of inmates awaiting parole hearings, life parole
24 consideration hearings, or life rescission hearings, hearings will
25 be conducted by a panel of three or more members, the majority
26 of whom shall be commissioners. The board shall report monthly
27 on the number of cases where an inmate has not received a
28 completed initial or subsequent parole consideration hearing within
29 30 days of the hearing date required by subdivision (a) of Section
30 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless
31 the inmate has waived the right to those timeframes. That report
32 shall be considered the backlog of cases for purposes of this
33 section, and shall include information on the progress toward
34 eliminating the backlog, and on the number of inmates who have
35 waived their right to the above timeframes. The report shall be
36 made public at a regularly scheduled meeting of the board and a
37 written report shall be made available to the public and transmitted
38 to the Legislature quarterly.

39 (e) For purposes of this section, an en banc review by the board
40 means a review conducted by a majority of commissioners holding

- 1 office on the date the matter is heard by the board. An en banc
2 review shall be conducted in compliance with the following:
- 3 (1) The commissioners conducting the review shall consider
4 the entire record of the hearing that resulted in the tie vote.
- 5 (2) The review shall be limited to the record of the hearing. The
6 record shall consist of the transcript or audiotape of the hearing,
7 written or electronically recorded statements actually considered
8 by the panel that produced the tie vote, and any other material
9 actually considered by the panel. New evidence or comments shall
10 not be considered in the en banc proceeding.
- 11 (3) The board shall separately state reasons for its decision to
12 grant or deny parole.
- 13 (4) A commissioner who was involved in the tie vote shall be
14 recused from consideration of the matter in the en banc review.